

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 17, 2013

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:46 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist
STEPHEN VARGA, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
TAMAR GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
STEPHEN GYOR
MATT JESICK
ARTHUR JACKSON
STEPHEN MORDFIN

NCPC STAFF PRESENT:

MARCEL ACOSTA, Executive Director

The transcript constitutes the
minutes from the Public Hearing held on
December 17, 2013.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S	
Preliminary Matters	9
<u>Application 18595 - Eva R. Sanchez</u>	9
<u>Application 18679 - Richard and Janet Barnes</u>	9
<u>Application 18654 - Craig and Laura Hickein</u>	12
<u>Application 18677 - Appeal of James P. Hill and Edward V. Hanlon</u>	15
<u>Application 18678 - Rock Creek</u>	19
<u>Presentation by the Applicant</u> Chris Collins	22
<u>Office of Planning Report</u> Arthur Jackson	28
<u>Department of Transportation Report</u>	33
<u>ANC-2B</u>	33
<u>Testimony by Individuals in Support</u>	35
<u>Testimony by Individuals in Opposition</u> ...	35
<u>Closing Statement of the Applicant</u> Chris Collins	35
<u>Deliberation</u>	37
<u>Vote to Approve</u>	39
Preliminary Matter	
<u>Recall Application 18679 - Richard and Janet Barnes</u>	42

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T-A-B-L-E O-F C-O-N-T-E-N-T-S	
<u>Application 18674 - William and Catherine Durbin</u>	44
<u>Office of Planning Report</u> Brandice Elliott	47
<u>Department of Transportation Report</u>	47
<u>ANC-6B</u>	48
<u>Testimony by Individuals in Support</u>	49
<u>Testimony by Individuals in Opposition</u> ...	49
<u>Closing Statement of the Applicant</u> Philip Anderson	49
<u>Vote to Approve</u>	50
<u>Application 18680 - Michael R. Lewis</u>	51
<u>Office of Planning Report</u> Matt Jesick	53
<u>Department of Transportation Report</u>	54
<u>ANC-3E</u>	54
<u>Testimony by Individuals in Support</u>	54
<u>Testimony by Individuals in Opposition</u> ...	54
<u>Closing Statement of the Applicant</u> Michael Lewis	55
<u>Vote to Approve</u>	55
<u>Application 18681 - Shirley H. Cox</u>	57
<u>Presentation by the Applicant</u> Shirley Cox	57

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T-A-B-L-E O-F C-O-N-T-E-N-T-S	
<u>Office of Planning Report</u>	
Stephen Mordfin	60
<u>Department of Transportation Report</u>	61
<u>Office of State Superintendent of</u>	
<u>of Education</u>	63
<u>ANC-7A</u>	63
<u>Testimony by Individuals in Support</u>	64
<u>Testimony by Individuals in Opposition</u> ...	64
<u>Vote to Approve</u>	66
<u>Recall Application 18679 - Richard and</u>	
<u>Janet Barnes</u>	67
<u>Presentation by the Applicant</u>	
Janet Barnes	73
Richard Barnes	74
<u>Office of Planning Report</u>	
Stephen Gyor	84
<u>Department of Transportation Report</u>	92
<u>ANC-1D</u>	92
<u>Testimony by Individuals in Support</u>	92
<u>Presentation by Parties in Opposition</u>	
Frank Agbro	92
<u>Testimony by Individuals in Opposition</u> .	108
<u>Rebuttal by the Applicant</u>	
Richard Barnes	109
<u>Application 18640 - Barry S. Jackson</u>	114
<u>Vote to Approve</u>	119

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P-R-O-C-E-E-D-I-N-G-S

9:46 a.m.

CHAIRPERSON JORDAN: Good morning. Would we please come to order.

We're here today for the Board of Zoning Adjustment Public Hearing and Public Meeting. Today's date is December 17th, 2013.

My name is Lloyd Jordan, Chairperson. To my right is Marcel Acosta who is the Executive Director of the NCPC and to my left is Peter May who is representative of the National Park Service.

And our make up today is a little bit different because the first case we're going to actually call is a foreign mission case, 18678. So, that's why we're being joined today by this different assembly of the BZA under the regulations.

Please be advised that today's hearing is being recorded live -- being webcast live and also being recorded by a court reporter. So, therefore, I'm going to ask you to refrain from any disruptive

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noises here in this room. So, I'm going to ask you to be sure to silence your telephones if you would.

The Board's hearing procedures are contained in a document to my left by the back door. So, if you need to be comfortable you understand how we process here, please feel free to get that.

Those of you who may be testified or providing statements to the Board today I'm going to ask that you do two things. The first thing is that I need you to complete two witness cards per person and give them to the court reporter to my right prior to your testimony.

Let me go over that again because sometimes that just skips right past people. Two card per person prior -- before testifying given to the court reporter to my right.

Now, I'm running a poll to see how many people will do that before coming to the table and there's some bets on the line what the percentage is going to be.

So, that's two cards per person,

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give to the court reporter prior to
testifying or providing your statement.

The second thing is that I need
you -- if you're going to provide a
statement or testify in front of the Board
today, I need you to stand and take the oath
or affirmation which will be given by Mr.
Moy, Secretary to the Board.

So, if you're going to provide
any statement or testimony today, I need you
to stand and take the oath or affirmation
which will be given by Mr. Moy.

MR. MOY: Good morning. Do you
solemnly swear or affirm that the testimony
you're about to present in this proceeding
is the truth, the whole truth and nothing
but the truth?

Ladies and gentlemen, you may
consider yourself under oath.

CHAIRPERSON JORDAN: There is a
couple of preliminary matters that we need
to take care of initially.

Mr. Moy, you wanted to talk about
18595.

MR. MOY: Yes, sir. For the

record, the Applicant in this Case Number 18595 requested a postponement of their hearing and staff would suggest rescheduling this application to April 29th, 2014.

CHAIRPERSON JORDAN: Then let's be sure we do so.

MR. MOY: Thank you, sir.

CHAIRPERSON JORDAN: The second preliminary matter, I'm going to ask the representative for the person with the party status request, I think that's Frank Agbro, and the Applicant -- representative of the Applicant, we're not going to hear the case, but I need to have a representative at the witness table please.

So, if you requested party status on 18679 and the Applicant need to come -- a representative to the table.

Why don't you take a seat and we can find out who you are and I can make sure we're doing it correctly?

Would you make sure your microphones are turned on? You should have a bright, glowing green light. Okay.

There you go. Would you identify

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yourself please?

MR. BARNES: Richard Barnes,
Applicant, and my wife, Janet Staihar
Barnes, Co-applicant.

CHAIRPERSON JORDAN: Okay. Thank
you.

MR. AGBRO: Good morning. My
name is Frank Agbro.

CHAIRPERSON JORDAN: Okay. What
we have been requiring and heavily
suggesting is that the -- anytime there's a
party status request and particularly if the
Board -- if it appears there's a great
likelihood that the Board will grant party
status, is for the parties to have
conferenced prior to your case being called
and it does look highly likely that we will
grant the party status to Mr. Agbro and so,
prior to your case coming back, I'm going to
ask that you step out in the hall, have a
conversation about resolving your
differences.

We have learned that this
practice has turned out to be very, very
successful in regards to a practice for this

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Board and I'm asking you to do so prior to your case coming back and it really works well for people to try to work together. Especially neighbors to try to work out any differences if it can be because we prefer for you to work it out as opposed to the Board not making one side or the other happy -- not happy.

And I'm telling you it works. We now have some real believers here that didn't think it would work. We've had sometimes cases where there's ten different people requesting party status. I think we had one of twelve in areas which you wouldn't think that people could ever come to an agreement and it has worked out.

So, with a good faith effort your party, you might be able to work it out and so, we'll recall your case after you've had a chance to huddle in the hallway and have some discussion about your differences.

We appreciate it. Thank you.

The next matter is -- I want the Applicant in 18654.

Would you state your name please?

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MR. HICKEIN: Yes. Good morning.
My name is Craig Hickein. I'm the Owner
Applicant of 4008 3rd, N.W.

CHAIRPERSON JORDAN: Now, Mr.
Hickein, I called you on the preliminary
matter to discuss the relief that you're
requesting.

MR. HICKEIN: Yes, sir.

CHAIRPERSON JORDAN: And you may
be aware of both the Office of Planning and
the Zoning Administrator both have
calculated your lot occupancy to be 74
percent.

MR. HICKEIN: Correct.

CHAIRPERSON JORDAN: And you're
requesting special exception where there's a
max of 70 percent.

So, my question to you as opposed
to having you stay here all day, but if
you're ready to -- you have two options.
The first option is to -- well, maybe it's
three options.

The first option is that you can
tell me that you're ready to go and that
you're ready to put on evidence that's going

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to disprove the submission by the Office of Planning and the Zoning Administrator that your lot occupancy is not going to be over 70 percent and that's certainly for your risk to do so. Which we're glad to hear the evidence to support that.

Or the second thing is that you can amend your request and, therefore, amend your plans which still would have to be submitted subsequently to change your configuration so that it meets under 70 percent.

Or the third thing, you can keep the same plans and be -- and assume that you're going to be over 70 percent and then re-notice this for a variance request.

So, I just need an answer how you want to proceed.

MR. HICKEIN: Our position, Mr. Chairman, is that we're actually not over 70 percent because the structure that we're intending to --

CHAIRPERSON JORDAN: If you're ready to defend that, then fine. That's all I wanted was to be fair to you right up

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front instead of having you sit and get to that point.

MR. HICKEIN: May I inquire of the Board? If I proceed that way, am I granted an opportunity to amend the request at the end?

CHAIRPERSON JORDAN: You're going to take your shot. If you don't make it, it's done.

So, it's up -- that's why I'm giving you the opportunity.

And you've not going to be able to -- because you're going to have to re-notice it if it's over 70 for a variance. So, that's why I'm giving you the option now.

If you want to think about it for a minute, let me Mr. Moy.

MR. HICKEIN: That would be -- I will.

CHAIRPERSON JORDAN: All right. Thank you.

MR. HICKEIN: Thank you.

CHAIRPERSON JORDAN: Then the other -- let me handle this other one.

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Number 18677. Mr. Moy, I didn't tell you about 18677. This is an appeal.

Representative on this appeal. I called you up. Would you please identify yourselves please?

MR. HANLON: Edward Hanlon.

MR. HILL: James Hill.

CHAIRPERSON JORDAN: And your position with regards to this appeal? You're representing -- who are you in regards to the appeal?

MR. HANLON: I'm sorry. I'm one of the Appellants. Mr. Hill is one of the Appellants and the third gentleman here wanted to request party status. He's also -
-

CHAIRPERSON JORDAN: We're really kind of beyond that point.

Identify yourselves please.

MR. POSTULKA: John Postulka, Assistant Attorney General for DCRA.

MR. ROMEU: Rafael Romeu.

CHAIRPERSON JORDAN: Okay. This matter has been upon us for an appeal of the Zoning Administrator's decision. This

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appeal is 18677 and it was my thought and intent that this matter is really moot. The Zoning Administrator corrected his error from my understanding. He has issued a revocation. So, therefore, there is really no error to which to file the appeal and so, it would be my indication to dismiss this appeal.

And I know there's a request that you're asking to keep this thing open just in case they don't do what they're suppose to do. I don't think we have a provision that allows that to happen.

MR. HANLON: Mr. Chairman, my concern and Mr. Hill's concern was there's a 60-day period in which to appeal the revocation of the permit.

We did not dismiss our appeal because we are concerned that if for some reason he was successful in appeal of revocation, we dismiss our own appeal. We'd have no standing --

CHAIRPERSON JORDAN: Got you.

MR. HANLON: -- at that point.

CHAIRPERSON JORDAN: So, you're

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going to preserve that until the time period if he doesn't appeal to -- okay. I think that's fair. I think that's fair.

So, we would then -- when does the 60 run?

MR. POSTULKA: The revocation was December 6th. So, 60 days from then. Around February 6. Somewhere in that area.

CHAIRPERSON JORDAN: So, if that's agreeable. Mr. Moy, let's give it a -- can you give me a date then for that?

MR. MOY: Yes, sir, just a second please.

CHAIRPERSON JORDAN: Before -- I have no idea.

MR. MOY: Okay. We're going to use 60 days as the time line, Mr. Chairman.

CHAIRPERSON JORDAN: Yes. You want to probably look some time after 70.

MR. MOY: Yes, a little bit more than 60 days. I would for the Board's schedule put this one for I'd say February 25th.

CHAIRPERSON JORDAN: That's 60 days?

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MR. MOY: Okay. Well --

CHAIRPERSON JORDAN: No, that occurs from the December date. Okay. February 25th?

MR. MOY: Yes.

CHAIRPERSON JORDAN: Okay. February 25th. We'll put this on for February 25th and certainly let us know the status of where we are. We'd appreciate it.

Just didn't want you sitting here all day and get to the same point.

MR. HANLON: Thank you.

CHAIRPERSON JORDAN: Thanks a lot.

Now, let's call our foreign mission case. Sorry.

MR. MOY: Thank you, Mr. Chairman. Good morning.

That would be Application Number 18678. This is the Application of Rock Creek, 1100 16th LLC on behalf of the Embassy of the Sultanate of Oman. I believe I pronounced that right. Pursuant to 11 DCMR 1002. This is to permit the location of a chancery annex in a vacant building in

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the SP-2 District at premises 1100 16th Street, N.W., Square 183, Lot 106.

CHAIRPERSON JORDAN: Okay. Good morning.

Would you identify yourselves please?

MR. MCBEATH: I'm William --

CHAIRPERSON JORDAN: Let's make sure. Is your mike on? It should be a bright green light. Yes.

MR. MCBEATH: William McBeath, Morgan Gick McBeath, Architect.

MR. COLLINS: Chris Collins, Holland & Knight.

MR. AL RIYAMI: Abdullah Al Riyami, DCMO from my embassy, Deputy Chief of Mission of the Embassy of Oman.

MS. RIDOLFO: Kathleen Ridolfo, Executive Director of Sultan Qaboos Cultural Center.

MR. SEAGROVES: Cliff Seagroves, Department of State Office of Foreign Missions.

MS. BLOOMFIELD: I'm Jessica Bloomfield with Holland & Knight.

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CHAIRPERSON JORDAN: Good morning.

I think you've all had the chance to see the reports that have been processed and submitted on this matter.

I don't see where there's any true controversy regarding any issues that are presented. I think the file has documented why the request is necessary and it would support the -- I don't know who wrote the language. Not to disapprove. That throws me for a loop. Not to disapprove the request.

But, I don't know if there's some other issues that, one, you want to present the Applicant and, two, whether or not the other members of the Board have some issues they need to have drilled down by the Applicant.

Mr. Acosta.

MR. ACOSTA: I just had one question. DDOT has suggested that the Applicant plant to willow trees in a public space behind the fenced area. Is that part of your plan or do you agree to do so?

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MR. COLLINS: Mr. Acosta, we looked at that originally and that was something that -- a request that was brought up about a week or so ago and our position was that we did not have money in the budget. This project gets a certain allocation from the Government and it didn't include any additional plantings and then we kind of drilled down on and yesterday, got from the owner of the property their landscape plan and there are trees in the front yard already.

And so, we've submitted to Mr. Moy copies of the landscape plan that the owner install earlier this year and it does have trees in the front yard.

So, we'd like to go with that.

CHAIRPERSON JORDAN: And you've given that to Office of Planning and to the Department of Transportation?

MR. COLLINS: Actually, not. Office of Planning right now. I talked to Mr. Jackson about that earlier this morning. I called yesterday and we were not able to connect yesterday afternoon when I found

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that out. We spoke this morning about that.

CHAIRPERSON JORDAN: What type of trees are these?

MR. COLLINS: These trees are -- they're crape myrtle trees.

CHAIRPERSON JORDAN: Okay. All right. Is there any other questions we may have for the Applicant? Mr. May, do you have any questions or do you want to take a second?

Would there be anything, Mr. Collins, that's outside of what you've already filed that you think the Board needs to hear?

MR. COLLINS: Maybe just Mr. Al Riyami to say a few words on behalf of the ambassador.

CHAIRPERSON JORDAN: Certainly. Please.

MR. AL RIYAMI: Good morning. Okay. I'm here this morning on behalf of the Ambassador who had to fly home unexpectedly due to a family emergency.

Okay. I thank you for your consideration and I just want to request

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that you approve our application.

CHAIRPERSON JORDAN: Very good.
Thank you.

MR. AL RIYAMI: Thank you.

CHAIRPERSON JORDAN: Send our
best to the Ambassador please.

Board, any other questions? Mr.
May.

COMMISSIONER MAY: Given the
statement that trees have been planted on
the -- in the public space in front of the
property, not the trees that the Office of
Planning had suggested. There's a big
difference between a tulip poplar and a
crape myrtle. So, I'm interested in hearing
what the Office of Planning has to say about
that. Also, there was the issue of the
street trees that were suggested as well
which are willow, oaks I guess.

So, I'm just interested in that
issue to see where it's headed and see
whether at some point in the future at least
these things can be realized.

These small decorative trees are
really not the same. I don't know what was

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driving tulip poplars, but a big difference.

MR. COLLINS: The street tree is already there. It was replaced and we have a photo of it. It's up on the board. Part of our submission.

CHAIRPERSON JORDAN: That's the tree closes to the curb?

MR. MCBEATH: Yes, it's hard to see the tree, but it's right in the center of that photograph actually. Right at the curb and that's been recently replanted as well.

COMMISSIONER MAY: Well, we'll ask the Office of Planning if they have any objections.

Is there any thought in the long term? I mean I understand how crape myrtle fits with the current landscape design of the public space there which is very elaborate and much more ornamental. A tulip poplar, you'd picture in a -- you know, maybe with a hedge around it and grass, but not much more. So, I'm wondering if that's -- if there's any consideration to moving in that direction?

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MS. RIDOLFO: We have no objection to planting the trees that are requested. The main issue for us was that we had not budgeted for it this year.

If I could give assurances that we will include it in our budget or perhaps we can seek additional funding from the Government to see that through during the reconstruction of the building phase in 2014. We're be happy to do so.

CHAIRPERSON JORDAN: Okay. Have you priced it?

MS. RIDOLFO: No, I have not.

CHAIRPERSON JORDAN: Okay. Do we know what something like that might cost?

MR. COLLINS: No, it just came up. So, we didn't really --

CHAIRPERSON JORDAN: And so, it might be possible to swap those for the other trees that you're already planting? No.

MS. RIDOLFO: The trees were planted.

CHAIRPERSON JORDAN: Oh, they're already in. All right.

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All right. So, is there anything else from the Applicant? We can go to the Office of Planning and work our way back. Certainly have any rebuttal time that you may need if necessary.

MR. COLLINS: No, that's it from us.

CHAIRPERSON JORDAN: Okay. Then let's turn to Office of Planning. Mr. Jackson, I know you just had the opportunity to look at the --

MR. JACKSON: Yes, Mr. Chairman, Members of the Board, my name is Arthur Jackson, D.C. Office of Planning.

I appreciate the fact -- this is good news that the Applicant -- that the owner of the property and the Applicant have worked to put together a landscape plan for the site. Because for a number of years, it was barren. But, this -- when it's fully in blossom, I'm sure it'll be a welcome addition.

We also appreciate the fact that the Applicant is willing to move forward to future funding sources to possibly put

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something in line with -- put some landscaping in line with what both the Historic Preservation Office and the Department of Transportation have recommended and we think that assurance to work forward makes -- work toward this effect would -- is sufficient for the Office of Planning.

We also appreciate the fact the Applicant has been very forthright in discussing their issues with the Office of Planning, have provided very timely information. It's interesting to work with an Applicant who really have provided information virtually instantaneously when the Office of Planning has asked for it.

And we highlight the fact that based on the work that's been done to date and the proposals for the attachment of just a statue and the additional landscaping, this will really beautify a corner that has gone through some transitions, but will now be a very good addition to the historic district.

And so, with that, the Office of

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Planning enthusiastically supports the application.

And now, I would note, however, that the Office of Planning included a couple of conditions for approval in the application, but I believe the Applicant indicated that those may not be necessary. Because, number one, they've contacted the Historic Preservation Office directly to see if there were any additional changes.

We would take -- suspend this approach just in case Historic Preservation has some issues later on. There are not anticipated to be any. So, we think that issue should be eliminated.

And now, they have a landscape plan. We think the second issue -- the second condition is no longer necessary.

So, again, we enthusiastically recommend approval of this application as it stands.

CHAIRPERSON JORDAN: Mr. May.

COMMISSIONER MAY: So, I'm sorry. Are you saying that neither of those two conditions really applies any more? You

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were clear on the second one. I wasn't clear on the first one.

MR. JACKSON: Well, the -- I'm sorry. Yes, we still would suggest a condition that allows for placement of the above referenced ship because the landscape plan doesn't really show the ship.

COMMISSIONER MAY: Right.

MR. JACKSON: And I don't think we have any illustration. We have a general description of it.

COMMISSIONER MAY: But, I mean is any of that really actually necessary for our approval? I mean wouldn't they ordinarily have to go through Public Space approval process for replacement of a sculpture like that?

MR. JACKSON: Well, as with previous procedures, Public Space approval is part of the FMBZA review.

COMMISSIONER MAY: Okay.

MR. JACKSON: So, all public space issues are handled by FMBZA. If they were to come back and do it outside of FMBZA, it would be by the Public Space rules

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as opposed to the FMBZA rules.

COMMISSIONER MAY: Okay. All right.

MR. JACKSON: So, it's to their advantage to do everything --

COMMISSIONER MAY: All right. Thanks.

CHAIRPERSON JORDAN: Oh, wait a minute. Now I'm confused because we're not Public Space. However, they have to still go through Public Space to --

MR. JACKSON: No. No, anything that's approved by this Board is approved under the foreign mission provisions of the regulations and in that, the Public Space review is part of your review. Public Space is Historic Preservation. It's all wound into one.

CHAIRPERSON JORDAN: Yes. I do know we have the authority in regards to Historic Preservation.

Excuse me. Sorry. Thank you.

Is there any other questions of Office of Planning? Does the Applicant have questions of the Office of Planning?

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MR. COLLINS: No, sir, we have no questions of the Office of Planning.

But, I just -- I would like to clarify if there's still a question in the Chairman's mind about the authority of the FMBZA to approve items in public space.

CHAIRPERSON JORDAN: I think I'm clear. You know, we can approve it. If somebody else has another bump about it, then that just gets worked out, you know.

Any other questions of Planning, Board? No.

Then is there a representative here from the Department of Transportation? We do have a letter of no objections from the Department of Transportation. Although, they were also asking as we've talked about the willow tree issue in their report.

Do we have a representative of ANC-2B? Representative of ANC-2B? We do have a letter in support to which we will give great weight from ANC-2B who voted with a quorum present 6 to 0 to support the application.

Do you want to provide for the

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Secretary of State's Office? You would like to provide testimony or you want to stand by the letter that's been submitted?

MR. SEAGROVES: I can stand by the letter. It's basically verbatim.

CHAIRPERSON JORDAN: And we do have a letter that this is in the best interest of the United States submitted by the Department of State supporting this application.

We have letters of support from President's Cooperative saying they're in support of this relief being given.

I'm sorry. Does the Board have any questions? Does the Applicant have any questions for the Federal side, the Secretary of State's Office?

MR. COLLINS: No, sir.

CHAIRPERSON JORDAN: Okay. Is there anyone in the audience who wishes to testify in support of this application other than what we've already heard? Anyone else wishing to testify in support?

Anyone wishing to testify in opposition? Anyone in opposition?

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Then we will turn back now to the Applicant to see if there's any closing or rebuttal or closing you think you need to make.

MR. COLLINS: There's only one point of clarification, Mr. Chair, and that is that the DDOT report and the OP report each specify a different type of tree within the fence line and we just need to get guidance if we were to replace which recommendation we would need to follow.

MR. JACKSON: Mr. Chairman, I could clarify that.

CHAIRPERSON JORDAN: Yes, I was going to ask you. Please. Thank you.

MR. JACKSON: I think the OP report was talking about a type of tree within the fence line and I believe the DDOT report was about a tree along the street. I believe.

COMMISSIONER MAY: The last paragraph of the DDOT report calls for willow oak trees behind the fence and in the tree space. So.

MR. JACKSON: Well, we would --

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of course, we're the Office of Planning.
So, we would lean toward the Historic
Preservation recommendation inside the
fence.

COMMISSIONER MAY: No reason why
we couldn't recommend flexibility between
those species of trees and --

MR. JACKSON: That's very
reasonable.

COMMISSIONER MAY: -- approve.
Right and then it can be worked out with
DDOT and Office of Planning.

CHAIRPERSON JORDAN: Okay. Is
there anything else?

All right. With this, then we
would close the hearing and proceed to
deliberation. Is there anyone on the Board
who wants to start or have any issues or
something they want to discuss regarding
this or speak in support?

COMMISSIONER MAY: I'm just ready
to move forward.

CHAIRPERSON JORDAN: Okay. All
right. So, all right. So, I would move
that the Board approve the plans including

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the use of public space with some leeway to allow any additions or substitutions of trees as discussed with Office of Planning and/or Department of Transportation certainly within the discretion of the Applicant to decide which route to go and that the Board vote not to disapprove the application subject to that. Not to disapprove the -- that would be my motion.

MR. ACOSTA: Second.

CHAIRPERSON JORDAN: Excuse me. I think -- let me -- I grabbed the Office of Planning's --

MR. JACKSON: Just for clarification, I think it would be good if you made note of the statue that they're planning to put in public space.

CHAIRPERSON JORDAN: Oh, I was approving the plan as submitted, but --

MR. JACKSON: There's no statue on the plan.

CHAIRPERSON JORDAN: I thought the statue was in the plan?

MR. MCBEATH: There is a plan. It's called on the plan -- site plan there's

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a sculpture and as well as in the elevations and the renderings. It's a fairly modest sculpture of a boat, but it's on the plans.

CHAIRPERSON JORDAN: Okay. All right. So, all right. Was there a second for the motion?

COMMISSIONER MAY: Yes.

CHAIRPERSON JORDAN: Motion made and second. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON JORDAN: Those opposed nay. The motion carries.

Mr. Moy.

MR. MOY: Yes, sir, staff would record the vote as 3 to 0. This on the motion of Chairman Jordan to not disapprove. Second the motion Mr. Acosta. Also in support, Mr. Peter May. We have a Board Member not present, not participating and a Board seat vacant. The motion carries 3 to 0.

CHAIRPERSON JORDAN: Thank you. Then we can have a summary order if that's appropriate. Is there -- yes.

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MS. GLAZER: Mr. Chair, since
this is a --

CHAIRPERSON JORDAN: Okay. Got
it. Yes, that's right. This is not a
hearing. This is a rulemaking in the
legislative body. So, we do need to have
the -- actually do an order and do a
finding, issue the rule. So, very good.
Thank you. We'll take care of our end.

Thank you, all, for coming.

MS. RIDOLFO: Thank you.

CHAIRPERSON JORDAN: Sorry to
beat up on you, really give you such a hard
time here today. Thanks.

We're going to take a brief
three-minute recess so that we can change
players.

(Whereupon, at 10:17 a.m., a
recess was taken until 10:23 a.m.)

CHAIRPERSON JORDAN: We're back
in session.

MR. MOY: Yes, sir.

CHAIRPERSON JORDAN: I think
there's an announcement in 18654.

MR. MOY: Yes, sir. Yes, I

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believe the Applicant -- well, he's here. I can state for Board or he can do that.

CHAIRPERSON JORDAN: No, we can do it administratively.

MR. MOY: Okay.

Administratively, my understanding is the Applicant needs additional time to revise his plans attendant to the his relief to keep it, I believe, within the special exception relief and I'm told that he'll need another two months to be able to do that.

So, if we're looking at our docket for the month of February, staff would suggest -- well, February 25th is starting to get full. So, I would suggest either -- let's go with March 4th.

CHAIRPERSON JORDAN: Will that give enough time? Is that good for you? Okay. He's nodding yes. So, let's do that.

MR. MOY: Very good. Thank you, sir.

CHAIRPERSON JORDAN: And let's do that. Let's order it for that --

MR. MOY: Thank you.

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CHAIRPERSON JORDAN: Thank you.

Okay. I have another preliminary matter in 18679. So, could we have the Applicant come back to the table please? 18679.

Just a quick question because it's something that we need to get straight. Just announce your names again although we have a record. 18679. Just identify yourselves again.

Make sure your mike's on please, Mr. Barnes.

MR. BARNES: Richard Barnes.

MS. BARNES: Janet Staihar Barnes.

CHAIRPERSON JORDAN: Did you do a presentation with Historic Preservation on this matter?

MR. BARNES: Not on this one specifically. Historic Preservation had approved our earlier proposal that this Board had considered in 2009. Which was more elaborate. It was basically -- rather than a deck, it was a room although the footprint was essentially the same. So,

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they had approved that version.

CHAIRPERSON JORDAN: But, did you reply to them? Have you gone and made a submission to Historic Preservation? Because this is a contributing historic structure.

MR. BARNES: Correct.

CHAIRPERSON JORDAN: And so, you did present to them on this application?

MR. BARNES: Not on this application. On the prior more elaborate one which they had approved.

My understanding was that, you know, in your procedures that the application would go them.

CHAIRPERSON JORDAN: Well, there's a couple of ways. Just give me a second.

MR. BARNES: The ANC has approved this specific project.

CHAIRPERSON JORDAN: Yes, I know the ANC, but we were talking about Historic Preservation.

Jeff, what do you think? It's a question because it's a contributing

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structure that the Board may feel more comfortable with having a report in the file.

We could do this. We could go ahead and take testimony and subsequently get a report from HPRB. Since the parties are here today, we could do it that way. Okay. That's the way we'll handle it. Let's do it that way.

All right. Thanks. Then we'll recall your case. Thank you.

(Whereupon, at 10:27 a.m., a recess was taken until 10:29 a.m.)

CHAIRPERSON JORDAN: 18674.

MR. MOY: Okay. That would be Application 18674 of William and Catherine Durbin, pursuant to 11 DCMR 1202.1 and 3104.1. This is a special exception under Section 223 in addition to an existing one-family row dwelling not meeting lot occupancy, court and nonconforming structure requirements. This is what has been advertised.

CHAIRPERSON JORDAN: Please identify yourselves?

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MR. ANDERSON: Thank you. Good morning, ladies and gentlemen. My name is Philip Anderson, architect for the project.

MR. DURBIN: Good morning. William Durbin, owner/occupant.

CHAIRPERSON JORDAN: Okay. I think this is another one that certainly is one that I don't see any need for any additional testimony. I think the file is well documented regarding the request for relief.

Let me ask does other Board Members have any things they need to hear from you. Anybody have any issues they want to talk -- do you need anything from them?

COMMISSIONER TURNBULL: Since the Architect of the Capitol's already weighed in, I have no comments.

CHAIRPERSON JORDAN: Oh, yes, that would have been interesting. That is true. Right.

Yes, we wouldn't put you in that position, Mr. Turnbull.

COMMISSIONER TURNBULL: Especially since I signed it. So.

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CHAIRPERSON JORDAN: Okay.

Anything additional you need? Certainly, you have the right to put in some other evidence if you want, but I'm telling you right now, we're comfortable with your request.

So, we will go -- if it's okay with you, we'll go to Office of Planning and kind of take this out of order to kind of move this along and you also have the right to do any rebuttal if there's anything that comes up. So, is that all right?

MR. ANDERSON: Yes, that's all right.

CHAIRPERSON JORDAN: Then let's turn to the Office of Planning and see if there's anything in addition to -- that you need to supplement your report with.

MS. ELLIOTT: I --

CHAIRPERSON JORDAN: Go ahead.

MS. ELLIOTT: Good morning, Mr. Chairman, Members of the Board. For the record, I'm Brandice Elliott and the Office of Planning is recommending approval. We're happy to stand on the record.

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CHAIRPERSON JORDAN: Any questions, Board? Any questions of the Applicant to the Office of Planning?

COMMISSIONER TURNBULL: No thank you, Mr. Chair.

CHAIRPERSON JORDAN: Is anyone here from the Department of Transportation for this particular case? We do have a letter from the Department of Transportation to which they submit they have no objection to your request.

Is anyone here from ANC-6B? ANC-6B? They have submitted a letter in support to which we will give great weight in which they recommend our approval of your application. We appreciate that.

The Architect of the Capitol has submitted a letter of no inconsistency of your plan with the Capitol District. So, and Mr. Turnbull doesn't want to go against his boss. So, no, honestly, to go himself. Right?

COMMISSIONER TURNBULL: That's right.

CHAIRPERSON JORDAN: That would

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be interesting though.

COMMISSIONER TURNBULL: That would be.

CHAIRPERSON JORDAN: No, and so, we know you've been well reviewed.

Is there anyone in the audience wishing to testify in support of this application? We do have several letters from neighbors in support of this. Several of your neighbors. So.

Anyone wishing to testify in opposition? Anyone wishing to testify in opposition?

Then we will turn it back to the Applicant if there was any rebuttal that you need to make, but I don't think there was any and any closing. But, we could -- if you wish.

MR. ANDERSON: No thank you.

CHAIRPERSON JORDAN: Okay. Smart. Sometimes people -- as I say a lot, people have these sometimes give me and they'll start talking themselves into trouble.

But, no, we really appreciate it.

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It was a fine put together application.

With that, we'll close the record and I would move that we grant the relief requested by the Applicant.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON JORDAN: Motion made and second. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON JORDAN: Those opposed nay. The motion carries. Mr. Moy.

MR. MOY: Yes, the staff would record the vote as 3 to 0. This on the motion of Chairman Jordan. Second the motion Mr. Turnbull. Also in support, Mr. Hinkle. We have a Board Member not present and a seat vacant. The motion carries 3 to 0.

CHAIRPERSON JORDAN: Okay. Thank you. Summary order.

MR. MOY: Thank you. Thank you.

MR. ANDERSON: Thank you.

CHAIRPERSON JORDAN: Thank you. Eighty.

MR. MOY: Application Number

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18680. This is the application of Michael R. Lewis pursuant to 11 DCMR 3104.1, special exception to allow an accessory basement apartment within a one-family dwelling under Section -- as advertised under Section 202.10.

CHAIRPERSON JORDAN: Okay.
Please identify yourself. Make sure your microphone is turned on please.

MR. LEWIS: I am Mike Lewis the owner of the property.

CHAIRPERSON JORDAN: Very good.
Thank you, Mr. Lewis.

Here's another one which I don't foresee any issues that we need to hear in addition to the application already submitted.

Supporting documentation is fine in my estimation, but I would defer to other Board Members to see if they have any issues with the request. Need to hear any evidence from you.

Anybody? No. It's a good day.
So, the Board appears to be comfortable with your application as we stand now. That it's

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certainly leaning toward that we would approve it based upon everything that you submitted and all the other documentation in the file.

You have a right to put on other evidence if you think it's necessary, but otherwise, we can just move on and get this done.

MR. LEWIS: I think the file is complete and I'll quit while I'm ahead.

CHAIRPERSON JORDAN: Then let's turn to the Office of Planning and see if there's anything in addition that they would like to supplement their -- good morning.

MR. JESICK: Thank you, Mr. Chairman, Members of the Board, my name is Matt Jesick.

The Office of Planning is happy to stand on the record in support of the application.

CHAIRPERSON JORDAN: Good. Thank you, Mr. Jesick.

Is there any questions from the Board to OP? Any questions from the Applicant to OP?

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Then is there anyone here from Department of Transportation on this case? We do have a letter of no objection to the application submitted by the Department of Transportation.

Is there anyone here from ANC-3E? ANC-3E? We do have a letter which we'll give great weight to from ANC-3E who recommends the approval.

We have several letters of support, some neighbors and et cetera, but is there anyone else here wishing to testify in support of this application? Anyone else wishing to testify in support?

Anyone wishing to testify in opposition? Anyone wishing to testify in opposition?

Then we turn back to the Applicant. If there was any reason to give any rebuttal, it's not there and to close, we can just close with your permission.

MR. LEWIS: Correct.

CHAIRPERSON JORDAN: So, let's close the record and I would move that we grant the relief requested by the Applicant

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in 18680.

MEMBER HINKLE: Second.

CHAIRPERSON JORDAN: Motion made and second. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON JORDAN: Those opposed nay. The motion carries. Mr. Moy.

MR. MOY: Yes, sir, staff would record the vote as 3 to 0. This on the motion of Chairman Jordan to approve the application with the relief requested. Second the motion Mr. Hinkle. Also in support Mr. Michael Turnbull. Board Member not present. Seat vacant. Motion carries 3 to 0.

CHAIRPERSON JORDAN: And a summary order please.

MR. MOY: Yes, sir, thank you.

CHAIRPERSON JORDAN: Thank you very much.

MR. LEWIS: Thank you. Will I receive a notice of some --

CHAIRPERSON JORDAN: Yes, you'll get a copy of the order. I don't know how

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long.

MR. MOY: Probably tomorrow or
the next day.

MR. LEWIS: It'll be mailed.
Okay.

MR. MOY: Yes.

MR. LEWIS: Thank you.

CHAIRPERSON JORDAN: Well, it'll
be mailed by that time and in a couple of
days --

MR. LEWIS: Got it. Thanks.

CHAIRPERSON JORDAN: Well, thank
you. Thank you. Eighty-one.

MR. MOY: The next case before
the Board is Application Number 18681. This
is the application of Shirley H. Cox,
pursuant to 11 DCMR 3104.1. This is a
special exception to establish a child
development center (15 children and three
staff) as advertised under Section 205.

CHAIRPERSON JORDAN: Very good.
Thank you. Would you please identify
yourself?

MS. COX: Shirley Cox. I'm the
owner at 3008 K Street, S.E.

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CHAIRPERSON JORDAN: Good morning, Ms. Cox. Thank you for coming.

And you've been in operation for?

MS. COX: Two and a half years.

CHAIRPERSON JORDAN: Two and a half years. Okay.

The only question I have, have you had a chance to look at conditions that were recommended by the Office of Planning?

MS. COX: Yes, I have. The recommendation about the fencing for the noise abatement was -- we were able to plant some trees -- I mean some shrubs that are going to grow to six feet. There are ten right now and the recommendation was that we put four more up. That will satisfy their recommendation. So, the plan is hopefully by the spring we will have four more up to comply with their request.

CHAIRPERSON JORDAN: And you're comfortable with the other recommendations?

MS. COX: Yes.

CHAIRPERSON JORDAN: There was a total of six and you responded regarding --

MS. COX: Oh, I'm sorry.

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CHAIRPERSON JORDAN: There's a total of six.

MS. COX: Yes, I'm comfortable with all of the -- all of them. Yes.

CHAIRPERSON JORDAN: Okay. Thank you.

MS. COX: Um-hum.

CHAIRPERSON JORDAN: Does the Board have any questions or anything they need to hear from the Applicant on this case or since it's just a continuation and it's another three-year term. So, it's --

MS. COX: Yes.

CHAIRPERSON JORDAN: Okay. Then with your permission, we'll go to the Office of Planning and see if there's anything they need to do to supplement unless you want to present something else to the Board.

MS. COX: I just have one additional thing in terms of support from the block. Which was -- there was a party in opposition three years ago.

I currently have signatures from the neighborhood that I would like to submit now.

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CHAIRPERSON JORDAN: Okay.

MS. COX: I did not submit them previously.

CHAIRPERSON JORDAN: You can hold on to them for right now.

MS. COX: Sure.

CHAIRPERSON JORDAN: See you almost talked yourself into trouble talking about opposition. There's not one filed in this case.

MS. COX: Okay. All right.

CHAIRPERSON JORDAN: And so --

MS. COX: Letters of support.

CHAIRPERSON JORDAN: So, I think you should let us drive quickly over to Office of Planning --

MS. COX: All right.

CHAIRPERSON JORDAN: -- before we open some doors.

Well, she said she's comfortable with a three-year term. You're comfortable with a three-year term. Correct?

MS. COX: Yes.

CHAIRPERSON JORDAN: Office of Planning. Sorry about that. Continue this

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morning. How are you?

MR. MORDFIN: Thank you. Fine. Thank you. Chairman and Members of the Board, for the record, I'm Stephen Mordfin with the Office of Planning and the Office of Planning's going to stand on the record in this case.

CHAIRPERSON JORDAN: Good. Thank you.

Any questions, Board, for Office of Planning? The Applicant, any questions for Office of Planning?

MS. COX: No, I don't.

CHAIRPERSON JORDAN: Okay. Good. See. Great report.

Is there anyone here for the Department of Transportation? We do have a letter of no opposition and there were some conditions in office of -- Department of Transportation's report. I think we have encompassed those. How we not in yours? Department of Transportation's report.

MR. MORDFIN: I had spoken with them. They hadn't prepared anything written when I had prepared my report.

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CHAIRPERSON JORDAN: Yes, let me take a look because I didn't make my notes here and I just need to go back a second. I don't think there was anything. When I read it, I didn't really notice any real issues.

MS. GLAZER: Mr. Chair, I believe DDOT did something recommending no objection.

CHAIRPERSON JORDAN: Correct, but there were no conditions. Were there? There was a condition. What was it, Mr. Hinkle?

MS. GLAZER: I thought there were a few conditions.

MR. MOY: Yes, there are, Mr. Chairman, on the first page of their letter under Exhibit 23.

CHAIRPERSON JORDAN: How did I miss that?

MR. MOY: The first condition recommending a period of three years.

CHAIRPERSON JORDAN: Okay. Yes. Okay. That's what -- I knew that one. Okay. The same conditions. That's what I thought. There's no different conditions.

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Yes. Exactly. So, they were incorporated. That's what I thought. Okay. I'm in the ball game. That's with -- yes. That's why I thought it was the same condition. So, that's why I didn't write it down. All right.

Is there anyone here from the Office of State Superintendent of Education? We do have a letter of support and request - - recommendation for approval from the Office of State Superintendent of Education. The State Superintendent. Yes, that's right. OSSE.

Is anyone here from ANC-7A? I don't believe we ever received a letter from 7A.

Do you have it, Mr. Moy?

MR. MOY: The record is absent an ANC letter.

CHAIRPERSON JORDAN: Yes, and we do have -- I think in the OP report you indicated that they were in support. Oh, that they did not support. Is that what you had?

MR. MORDFIN: Yes, the Applicant

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informed the Office of Planning that the ANC did not support the application.

CHAIRPERSON JORDAN: Okay. But, we have no letter from them. So, the ANC voted against this?

MS. COX: At their meeting.

CHAIRPERSON JORDAN: Yes. It was the full ANC or was it the Single Member District or something?

MS. COX: It was the full ANC.

CHAIRPERSON JORDAN: Okay. But, they have not submitted any letter on this file. Okay. All right. So, we don't have anything official from them.

Is there anyone in the audience wishing to testify in support of this application? In support anyone?

Anyone in opposition? Anyone in the audience here in opposition?

Then moving back to the Applicant, you normally have a chance to rebut anything said or to provide closing, but there's nothing to rebut and there's probably nothing to close. So, we can just move into deliberations.

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MS. COX: Thank you.

CHAIRPERSON JORDAN: Then we close the record and I move that we grant the continuation of this matter based upon the conditions which were submitted in Office of Planning's report: That there's a three-year period, that the hours of operation shall be from 6:30 -- not to exceed 6:30 a.m. until 6:30 p.m., that maximum enrollment shall not exceed 15 children and no more than three staff persons, that the Applicant shall plant 14 trees along the eastern lot line as required by the -- as recommended by the Office of Planning, that the Applicant shall be permitted one non-illuminated flush mounted outdoor sign no more than 144 square inches and that the Applicant shall maintain the property in a clean, orderly condition including the regular upkeep of all landscaping, removing trash, proper storage of play equipment when the child development center is not in operation. Okay.

COMMISSIONER TURNBULL: Second.

CHAIRPERSON JORDAN: All right.

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Motion made and second. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON JORDAN: Those opposed nay. The motion carries. Mr. Moy.

MR. MOY: Yes, sir, staff would record the vote as 3 to 0. This on the motion of Chairman Jordan to approve the application with the conditions as cited by the Board. Second the motion Mr. Michael Turnbull. Also in support Mr. Hinkle. Board Member not present. Seat vacant. Motion carries 3 to 0.

CHAIRPERSON JORDAN: Very good. Thank you. Summary order please.

MR. MOY: Yes, sir.

CHAIRPERSON JORDAN: And we thank you for your time and thanks so much and good luck to you.

MS. COX: Thank you.

CHAIRPERSON JORDAN: Mr. Moy, 40. Oh, wait a minute. Counsel needed. Do we need counselors?

MR. MOY: Okay. Application Number --

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CHAIRPERSON JORDAN: Oh, that's your list. I'm sorry.

MR. MOY: Oh, I'm sorry.

CHAIRPERSON JORDAN: Okay. So, let's go ahead because she said she's going to be here at 11:00. Okay. I'm sorry.

So, let's call -- let's call 79.

MR. MOY: Then the next application before the Board is Application Number 18679 of Richard and Janet Barnes, pursuant to 11 DCMR 3103.2. This is a variance from the nonconforming structure provisions under Subsection 2001.3, variance from the lot occupancy requirements under Section 403, variance from the rear yard under Section 404.

CHAIRPERSON JORDAN: Mr. Agbro, are you still submitting your party status request?

MR. AGBRO: Yes.

CHAIRPERSON JORDAN: Okay. Well, let's take a seat and get this process through please.

Please identify yourselves.

MS. BARNES: I'm Janet Staihar

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Barnes.

CHAIRPERSON JORDAN: Make sure you push the thing. Thank you.

MS. BARNES: Janet Staihar Barnes. Staihar S-T-A-I-H-A-R Barnes B-A-R-N-E-S.

MR. BARNES: Richard Barnes.

MR. AGBRO: Frank Agbro.

CHAIRPERSON JORDAN: And, mr. Agbro, I understand you have made a request for party status. Which, you know, I really think is kind of borderline granting party status although you're the next door neighbor. That's the only thing that's really carry this for you.

Because your request for party status didn't really outline any considerations that are different than what the Board would normally do and one of the requirements is for you to outline where you have a special consideration. That it was not something that the Board would normally consider.

However, we'll grant you party status in this matter.

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MR. AGBRO: I appreciate it.

CHAIRPERSON JORDAN: I did take note that you -- you two had -- two parties I asked -- I requested earlier to confer. It was probably one of the fastest meet and confers that I've seen since I've been in here and it's just the two parties.

You know, we've had people who as I said ten and 12 took, you know, but, so, I taking it that nothing was resolved.

MR. BARNES: Correct.

MR. AGBRO: Correct.

CHAIRPERSON JORDAN: You want the Board to render the decision in this matter.

MR. BARNES: Also, Mr. Chair, reserving the right during -- at least during rebuttal to question Mr. Agbro's status.

CHAIRPERSON JORDAN: Well, let's do it now before we've officially given party status. What is the issue on party status that you are in opposition against?

MR. BARNES: Okay. The issue on party status is that Mr. Agbro has a deck. We have no problem with his deck.

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CHAIRPERSON JORDAN: That has nothing to do with his party status.

MR. BARNES: Well, if I may continue. Your staff has found on two occasions in connection with a prior application and in connection with this application that no variance was granted for that deck.

Therefore, we would question Mr. Agbro's ability to use the processes of this Board to question our application when, in fact, he did not abide by them in the context of his own deck which was built in mid-2004. Well after any grandfather period.

CHAIRPERSON JORDAN: That doesn't go to the matter of whether he would have the right to party status. It may go to credibility, but it doesn't go to party status.

MR. BARNES: Very well.

CHAIRPERSON JORDAN: And so, we will grant the party status and you can use whatever you need to use in rebuttal or in your presentation regarding the issues that

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are before this Board and credibility is always an issue before this quasi-judicial body.

Okay. Then let's proceed.

MR. MOY: Is there --

CHAIRPERSON JORDAN: Have you --

MR. MOY: I'm sorry. Is there a time limit you want to put on the two parties?

CHAIRPERSON JORDAN: Yes, we can -- let me take another look. Because I don't think there's a whole bunch here. Fifteen minutes a side please.

Okay. Let me turn to the Applicant. We do have -- we understand your project. We understand your plans and you also understand the opposition that's been raised by the Office of Planning and the party, Mr. Agbro, regarding that.

It probably would behoove you if you hit -- your presentation to hit those things first or something in your 15 minutes of doing a presentation in support of your application.

Certainly, you want to hit where

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you have an exceptional situation, a condition of your property which allows you to receive a variance and the practical difficulties. It would be good to hear from you.

So, please proceed.

MS. BARNES: If I could start first.

CHAIRPERSON JORDAN: You have a total of 15 minutes. So.

MS. BARNES: Thank you. Mr. Chairman, before we moved into this house, it was a crack house. There were beer cans in the front yards. Trash in the yards. People sleeping in the front yard. The neighbors were absolutely appalled by the condition of this house.

This house is essentially a gateway to Mount Pleasant. So, before you go into Mount Pleasant, you see this house.

We have done everything that we can to improve it and the neighbors say well, you've beautified the corner. You've improved our property. Thank you very much.

We have outdoor security lights.

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We put up a very attractive wrought iron fence. We have lights. We now have a garden in front. Which is a sculptured garden with flowers and shrubs. Which is very well maintained.

On 17th Street, we have no opposition to this project. As a matter of fact, they love it and they want it to go through.

There was construction there before where we want to put the deck. The house had a major fire and the deck -- the annex which was an apartment is where we want to put the deck.

It will be well lighted. We plan to hire a very good architect, John Roberts, a restoration company, to build the deck and it will be rather a Spanish style. A nice deck that will enhance further the neighborhood with no security problems.

MR. BARNES: Thank you. We believe that this project is certainly consistent with zoning requirements.

Section 101.1 provides for, you know, adequate light and air, undue

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concentration -- prevent undue concentration of population, provide distribution of population. There are no issues in that respect that simply a deck from the first floor of our house would impose.

The elevated open-air deck does not impair general availability of natural light or circulation of air. Which was one of the points that the Board objected to when we had our earlier application for a complete sunroom -- covered sunroom in that location.

It is in character with the respective district. We believe it's -- you know, it's a suitable use.

You noted that the Department of Planning opposed. Actually, I believe the Department of Planning said it did not support. Which I would take as a bit of nuance that is different from flatly opposing.

Now, in fact, at the time we were moving into the house in 2004, Mr. Agbro was in the process of building his deck and my reaction was, you know, great. We would at

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some point like to probably do a deck as well.

His deck is, you know, perfectly decently built. The Board became formally aware of his deck during our prior proceedings in 2009. We can only assume that in the, you know, proceeding -- in the succeeding four years since it's been there you've in effect acceded to or tacitly approved the location of a deck in that area.

CHAIRPERSON JORDAN: The Board doesn't enforce. That would be if you filed a complaint with DCRA, but this Board does not do that. So, yes, you have to file a complaint with them.

MR. BARNES: Now, in your denial of our application in 2009, among other things, you noted that the addition would be taller than other existing additions. You noted the existing decks. You noted other decks in the neighborhood. Said they were fairly low, transparent structures. Which is exactly what we are proposing now would be. A fairly low, transparent structure

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exited off of our kitchen.

In its report, the Planning Department noted that we could as well without a variance build a patio on the ground level. We don't think that this would be a satisfactory replacement for a deck. It would be much less. Being at -- basically at ground level and right along the street and a full level below the adjacent deck, it would simply lack, you know, any of the privacy kinds of amenities that a deck would have.

Now, at the Advisory Neighborhood Commission's consideration of our earlier project in the course of a public hearing there, Mr. Agbro while opposing our full sunroom had said he had no objection to a deck.

In advance of the most recent ANC unanimous approval of our proposal, one of the Commissioners visited with Mr. Agbro knowing of his prior opposition. This Commissioner told us that the only concern was whether there was going to be a solid board fence underneath the deck surrounding

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an air conditioning pad.

And no, there's not going to be any kind of a solid fence. It would simply be another ornamental iron fence similar in style to the ornamental iron fence that surrounds the rest of our yard.

CHAIRPERSON JORDAN: Open air and light.

MR. BARNES: Open air and light. Yes, nothing -- just straight, you know, normal ornamental iron to surround the air conditioning pad that's presently surrounded by a rather unsightly chain-link fence.

We don't believe there will be any security issues. The area is already lighted. Will continue to be lighted.

We have security cameras. In fact, some of the output from our security cameras was used in a court case about a year ago and was well commended by the prosecutors.

In short, we believe that the deck is completely consistent with the neighborhood including the immediate next-door neighborhood, that it will enhance the

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views from 17th Street and that it is an application that we hope that the Board will approve.

CHAIRPERSON JORDAN: Thank you. Board, any questions of the Applicant?

Now, it's my understanding that your property by the filings that it's -- you've known that this is a contributing historically -- it's a contributing structure historically.

MR. BARNES: Correct. Yes, it's part of the Mount Pleasant Historic District.

CHAIRPERSON JORDAN: And also regarding your particular property in your particular square, your property's one of the smaller lots in that square. Correct?

MR. BARNES: That's correct. I think there are five in the square that are essentially the smallest and it's -- it is among those. Yes.

Although from a visual standpoint, we have far more public space adjacent -- inside the sidewalks and adjacent to our house than many of the

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others.

CHAIRPERSON JORDAN: That space would be -- that street -- in between the street and your house, that's public space?

MR. BARNES: Correct. Yes, everything from the --

CHAIRPERSON JORDAN: Comes up to your -- that comes up to your structure is public space?

MR. BARNES: From the structure to the sidewalk --

CHAIRPERSON JORDAN: Wow.

MR. BARNES: -- yes, is public space although it is fenced and we, you know, spent thousands of dollars caring for an improving it over the weed lot that it formerly was.

You know, Historic Preservation had considered the -- a much more expansive project and then September 25th, 2008, it had gained their approval.

CHAIRPERSON JORDAN: So, you couldn't expand your property or buy that lot next to you because it's actually publicly owned? Is that --

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MR. BARNES: Correct. Yes, there is no lot next to us except for Mr. Agbro's property. On the south side, there is a public alley. On the north side is Kilborne Place and on the east side is 17th Street.

CHAIRPERSON JORDAN: Board, any additional questions for anybody?

COMMISSIONER TURNBULL: You have read the Office of Planning report?

MR. BARNES: Correct.

COMMISSIONER TURNBULL: And you understand their arguments against your deck?

MR. BARNES: Well, I see what they're saying. I believe that the Zoning Regulations themselves spell out the philosophy for, you know, the regs as I referenced in our submission or that this deck is completely consistent with those and that, in particular, it's completely consistent with the deck that already exists next door.

COMMISSIONER TURNBULL: Which, as far as we know, is -- or we don't know may have been built illegally.

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MR. BARNES: That's correct.
Although you've had -- let's say you've had,
you know, notice of it, but it's there. We
certainly have no objection to that deck.

COMMISSIONER TURNBULL: So, you
have no objection with --

MR. BARNES: It's --

COMMISSIONER TURNBULL: -- every
house in the alley having a deck at the
back?

MR. BARNES: No.

COMMISSIONER TURNBULL: I think
the Office of Zoning might have a little bit
of an issue with that.

MR. BARNES: Well, probably so.
Yes, some of the -- the other houses in the
alley are built out and in -- you know, in
different kinds of ways.

COMMISSIONER TURNBULL: Okay.
Thank you.

CHAIRPERSON JORDAN: Any other
questions, Board?

Mr. Agbro, do you have any
questions you would like to ask the
Applicant?

MR. AGBRO: Well, you know, they keep talking about my deck.

CHAIRPERSON JORDAN: No. No. You're going to be asking questions --

MR. AGBRO: Oh.

CHAIRPERSON JORDAN: -- and questions only. What we call cross examination.

MR. AGBRO: No, I don't have any questions.

CHAIRPERSON JORDAN: Okay. All right. Thank you.

MR. AGBRO: Thanks.

CHAIRPERSON JORDAN: So, then let's turn now to the Office of Planning please.

MR. GYOR: Good morning, Mr. Chairman and Members of the Board. Stephen Gyor with the Office of Planning.

The Office of Planning cannot support the Applicant's request for relief as the Applicant has not established the unique condition on the property. The first prong of the variance test.

In addition, permitting lot

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occupancy in excess of 90 percent would contravene the Zone Plan.

As mentioned previously here today, OP acknowledges that there is a similar deck located on the adjacent property to the west, but we are unable to find a record of zoning relief for that property and to clarify the nuance of our -- the cannot support, I don't think the relief would be detrimental to the public good. There are other decks in the immediate vicinity and the existing property or existing parking on the property would be preserved.

However, nevertheless, the Applicant does not satisfy the first prong of the variance test.

Thank you.

CHAIRPERSON JORDAN: You don't find -- what about the -- because I didn't see in your report where you considered that this was a contributing historical structure. That would make it different than the other property that's on that block or on that square.

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MR. GYOR: Did not mention that. Did acknowledge the HPRB has not reviewed this application.

CHAIRPERSON JORDAN: And also that they are in bound by the public space that's adjoining their property.

MR. GYOR: We do mention the public space and the visual impact argument. Acknowledging that --

CHAIRPERSON JORDAN: Yes, but not in regards -- my question is not in regards to the visual impact. I'm speaking in regards -- how that property becomes a bit unique considering the other properties on that lot and that square on that row.

MR. GYOR: The property does have significantly more public space than other properties in the square. However, looking at the actual record lot and comparing that lot to the lots across Kilborne Place, for example, which are wider lots, they're a little bit shorter, but similarly sized.

So, we can find that the lot itself was unique.

CHAIRPERSON JORDAN: Um-hum.

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Even though it's kind of situated differently than those other lots that you just mentioned on Kilborne.

MR. GYOR: Correct.

CHAIRPERSON JORDAN: Okay. And you mentioned that you could not find a recorded deck for the -- I guess it's Mr. Agbro's property. What do you mean by that?

MR. GYOR: Well, I researched the Office of Zoning's records for zoning relief for the square and I wasn't able to locate a record of variance relief for the adjacent property. I understand it was built in 2004.

CHAIRPERSON JORDAN: And that means? So, you've looked and you couldn't find. That's what you say.

MR. GYOR: The long way of saying yes, I could not find it.

CHAIRPERSON JORDAN: Okay. All right. Board, any other questions? Commissioner Turnbull.

COMMISSIONER TURNBULL: Thank you, Mr. Chair.

Mr. Gyor, your one comment was

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that the -- on page 4 of your report, is "The property features do not create a practical difficulty to the owner as it relates to 16 by 16 deck -- elevated deck. The Applicant has not shown how a patio which could be installed without any zoning relief could not be placed within the rear yard."

MR. GYOR: Correct.

COMMISSIONER TURNBULL: One of your arguments is that a patio could be put in which would not need relief which would give the same enjoyment although they're saying it would not be the same privacy.

MR. GYOR: Acknowledging that it would be a different situation. It would be on the ground level, but nevertheless, a patio would not -- as you stated, would not require zoning relief.

COMMISSIONER TURNBULL: Yes.

Thank you.

CHAIRPERSON JORDAN: Okay. Any other questions for Office of Planning? Does the Applicant have any questions of Office of Planning?

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MR. BARNES: One further question with respect to the point on the patio.

CHAIRPERSON JORDAN: You're asking a question to the Office of Planning. Not a statement.

MR. BARNES: Yes.

CHAIRPERSON JORDAN: A question.

MR. BARNES: Yes.

CHAIRPERSON JORDAN: Okay. Thank you.

MR. BARNES: Yes. As you envision a patio, would that, in fact, remove the one-car parking place on the private property which is listed in your report?

MR. GYOR: I believe so. It would have to. Yes.

CHAIRPERSON JORDAN: Did you go out to the property?

MR. GYOR: I did. Yes.

CHAIRPERSON JORDAN: Any other questions?

MR. BARNES: No further questions of the Department.

CHAIRPERSON JORDAN: Let me ask

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you. Do you park behind your house where that patio would be? That specific --

MR. BARNES: Yes.

CHAIRPERSON JORDAN: Okay. Okay.

MR. BARNES: Um-hum. Rather than fighting for a place on the street.

MS. BARNES: And I might say in response to your question, a lot of the houses in our square do park their cars in the alley itself. Okay. Not in our -- in our space, but in the alley for pick-up or overnight or whatever else. So, it is utilized by some of the neighbors.

CHAIRPERSON JORDAN: Okay. Mr. Agbro, do you have any questions you would like to ask the Office of Planning?

MR. AGBRO: No, I don't.

CHAIRPERSON JORDAN: Okay. One second please. I've got to update my notes.

Is parking tight in your neighborhood?

MR. BARNES: Excuse me?

CHAIRPERSON JORDAN: Is there available extra parking on the street?

MR. BARNES: Parking is very

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tight in our neighborhood. Just at the last ANC meeting, there was a whole issue on trying to free up two parking places on the street because it's so tight.

CHAIRPERSON JORDAN: Okay. Mr. Turnbull.

COMMISSIONER TURNBULL: Do you have RPP? Do you have RPP in your neighborhood?

MR. BARNES: Yes. Yes.

COMMISSIONER TURNBULL: Okay.

CHAIRPERSON JORDAN: Yes. Where am I? Yes. Yes, it was a walk down that path. It was a walk down that. Thank you.

Okay. Where are we? We just have that -- is there anyone here from Department of Transportation? We do have a letter of no objection from the Department of Transportation.

Is anyone here from ANC-1D? ANC-1D. We do have a letter in support recommending approval of your request from ANC-1D.

Is there anyone here wishing to testify in support of this application?

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Anyone here wishing to speak in support?

Then let's turn now to Mr. Agbro.
You have 15 minutes to do your presentation
in opposition please.

MR. AGBRO: All right. Good
morning, Board. Distinguished Board
Members, thank you for giving me the
opportunity to be here today.

I'd like to -- I'm going to read
a prepared statement for you if you don't
mind.

Distinguished Board Members,
thank you for granting me early party status
in this case.

We believe the ANC's great weight
vote was predictable and since the
Commission was unable to get it right in the
Barnes' first application, we were not
expecting a different outcome in this
application.

Commissioners Jack McKay and Phil
Greiner were more concentrated on the fact
that if I had a deck, the Barnes should also
have a right to a deck. Totally ignoring
our concerns about safety and transparency

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in the alley.

It is our position that analogy a matter of right for the Barnes is not as simple as it sounds. If that were the case, it would have been a no brainer and we would have given them the green light to make improvements to their property and let the Board decide. There would have been no reason for me to be here participating in these proceedings in this capacity.

In contrast, where we see a need for safety in the alley, they see a desire for a deck. Where we see preventative measures for safety in the alley, they see Band-aids. Where we see vulnerability, they see luxury and a matter of right.

It was clear where the ANC vote was headed. We believe the Commissioners who voted in favor of this application might learn some new information today about our reasons for opposing the Barnes' application. We are submitting additional documents, a petition from neighbors who live along the alley. Additional pictures and official government documents in this

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case today for the Board to review.

The situation in the alley has worsened in recent years with predator-like strays from Mount Pleasant Street and Ellsworth filtering into back alleys in broad daylight. Scavenging and looking for opportunities to commit a crime and then escaping and blending in with the general population on the main commercial strip.

At the conclusion of these proceedings, we, family, friends and neighbors, look forward to continuing our tradition of culturally and environmentally enriching our community and neighborhood in its entirety while protecting and supporting the residents and their families when necessary.

Sincerely, Frank Agbro.

I wanted to ask the Board if I may, if you received my explanations with the party status application? With the pictures.

CHAIRPERSON JORDAN: Ask what now?

MR. AGBRO: Did the Board receive

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my explanations for --

CHAIRPERSON JORDAN: Oh, we've gone through it, up and down, sideways. If you submitted it, we've looked at it.

MR. AGBRO: Okay. Just checking. Thank you.

CHAIRPERSON JORDAN: Yes. Is that your complete --

MR. AGBRO: And -- submitted --

CHAIRPERSON JORDAN: Yes, and I just noticed. Did you prepare this petition?

MR. AGBRO: Did I prepare it? Yes, I did.

CHAIRPERSON JORDAN: And get the neighbors to sign it?

MR. AGBRO: Yes.

CHAIRPERSON JORDAN: And I noticed that this petition has on here that it's been expressed to them that the Applicant is trying to put a project on public space.

MR. AGBRO: Yes, they were asking some kind of variance. It was my understanding that they were seeking a

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variance to use part of the public space.

CHAIRPERSON JORDAN: Well, you understand that they're not trying to use public space.

MR. AGBRO: Maybe -- I didn't understand that until now.

CHAIRPERSON JORDAN: Oh, so, you realize it's not applicable. Right?

MR. AGBRO: Pardon?

CHAIRPERSON JORDAN: This petition wouldn't be applicable now. Right? Because it says that the Applicant is trying to do their project on public space.

MR. AGBRO: That was -- that was what my understanding. Erroneous there. Because that was my understanding. Because when I read their report, if there was a mention of public -- use of public space --

CHAIRPERSON JORDAN: But, I didn't see that in your party status or your submitting documents that you're opposing them using public space.

MR. AGBRO: No. No. I'm not opposing them using public space.

CHAIRPERSON JORDAN: No. No. I

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want to make it clear. In your party status application --

MR. AGBRO: Right.

CHAIRPERSON JORDAN: -- in your subsequent document, you never said in there -- I didn't read and I didn't see it and I'm asking you if it's there --

MR. AGBRO: I never said --

CHAIRPERSON JORDAN: -- that your opposition was only for them not to use public space.

MR. AGBRO: That was not only my -- my -- my concern -- I may have phrased it the wrong way, but my concern was the fact that obstructing a view was the main issue here. Okay. That was our concern. The safety issue. Okay. Whether they're using public space, that's not for me to decide.

CHAIRPERSON JORDAN: I think I understand. Okay.

MR. AGBRO: You understand?

CHAIRPERSON JORDAN: Oh, I understand. I understand. But, so, it's all right. So, now, you know there's no use of public space.

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MR. AGBRO: No, now, I know that.
Now, I know that.

CHAIRPERSON JORDAN: And you
still have opposition to this?

MR. AGBRO: Yes, I do because of
the fact that it -- because of the crime
issues that we've had -- we've been having.

CHAIRPERSON JORDAN: Crime
issues. How is their property contributing
to crime?

MR. AGBRO: Well, the thing --
visibility in the alley. Because the thing
is we didn't park our cars in the back under
the deck because of the fact that we've had
a lot of bags stolen and as early as the
last two or three days, I've had people in
broad daylight walk -- come in hiding,
looking into my apartment.

CHAIRPERSON JORDAN: So, do they
do that from your deck?

MR. AGBRO: Pardon?

CHAIRPERSON JORDAN: Do they do
that with your deck?

MR. AGBRO: Do they do it with my
deck?

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CHAIRPERSON JORDAN: Yes.

MR. AGBRO: Yes, they do that. I mean they will do that anywhere they can see a hiding space.

CHAIRPERSON JORDAN: So, do people hide under your deck?

MR. AGBRO: They do. They defecate.

CHAIRPERSON JORDAN: Okay. So, your --

MR. AGBRO: They defecate and they do other things in the middle of the night.

CHAIRPERSON JORDAN: So, you think your deck should be removed?

MR. AGBRO: I don't think so. I think it has done a public good because we're able to stop some -- a burglary during the broad daylight and I gave -- I turned in a police report where I could see --

CHAIRPERSON JORDAN: What's the public good? Your deck? Tell me about that.

MR. AGBRO: There was a burglary. A burglary that took place in the alley in

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broad daylight at 1:30 in the afternoon and I was standing right in that little hallway from the kitchen when I saw this gentleman walking at the point through where the air duct would be now going into the alley and burglarizing 1706.

CHAIRPERSON JORDAN: I guess my question was how does your deck contribute to protecting the neighborhood?

MR. AGBRO: Because I was able to call the police and have that person --

CHAIRPERSON JORDAN: Because you were standing on your deck?

MR. AGBRO: Yes, I was standing on my deck.

CHAIRPERSON JORDAN: And it gave you a better horizon to see.

MR. AGBRO: A better view of the 17th Street. You know, you have to understand Mount Pleasant. We've -- we've had a lot of issues with people coming from 17th from Mount Pleasant into the alleyways on --

CHAIRPERSON JORDAN: So, you're able to see to 17th Street?

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MR. AGBRO: Yes, I was able to see clearly and give an accurate description to the authorities and they were able to apprehend, This gentleman who escaped from that 1706 goes up on top of the roof, goes three houses and enters their house where he was apprehended.

CHAIRPERSON JORDAN: Okay. So, the Barnes' house that was closer to 17th Street and if they had the same type of deck, they would have a better view of 17th Street. Would they not? Wouldn't they?

MR. AGBRO: Well probably.

CHAIRPERSON JORDAN: Yes, I --

MR. AGBRO: Yes.

CHAIRPERSON JORDAN: Just probably or yes or no?

MR. AGBRO: Yes.

CHAIRPERSON JORDAN: Okay.

MR. AGBRO: Yes. Absolutely.

CHAIRPERSON JORDAN: Okay. I'm sorry. Board, any other questions you'd like to ask?

COMMISSIONER TURNBULL: Mr. Agbro, how were you able to build your deck?

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MR. AGBRO: How? I was -- well, I -- we put in the application. Went through the Office of Preservation -- Historic Preservation and then we were told that, you know, we could -- we had designs. There was a gentleman who was about to go to Europe or something like that. There was all this stuff going on in that office and we gave them the designs and said this is what we're going to build. They said go ahead and do it and then we did it and they immediately said that they did not approve it.

They asked us to make some adjustments to the deck because it wasn't -- it didn't fit what they wanted us to do and so, they gave us a stop-work order and relief -- you know, that stop-work order later on after, you know, we did what they wanted us to -- they wanted us to do.

COMMISSIONER TURNBULL: But, you did not come before this Board to be authorized to --

MR. AGBRO: At that time, nobody was clear as to what the rules were as to

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how -- you know, because they -- we understood -- it was our understanding in historic areas when you have -- you want to do something to your facade which is the front areas, that's when you have to go through all these different parts, but if you have something the back, you could -- you could do -- you could make adjustments in the back of your house. That was the understanding amongst neighbors during that time. About 20 -- almost 10/15 years ago.

COMMISSIONER TURNBULL: So, that means the Barnes can do something in the back of their house and not get permission?

MR. AGBRO: They can. I'm sorry. I didn't -- I didn't get the question.

COMMISSIONER TURNBULL: Well, let me -- I'll slow it up. The means the Barnes can do the same thing. They could build a deck in the back of their house without getting any other permission.

MR. AGBRO: I'm not saying -- I'm not saying they can. If they're required to, they should. If they're not required to, they shouldn't.

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COMMISSIONER TURNBULL: So, okay, now, we're going to take that and move it to your house.

MR. AGBRO: Um-hum.

COMMISSIONER TURNBULL: So, that means you should have had a permit or permission or been to this Board to get permission to do your deck.

MR. AGBRO: Well, after the fact -- after the fact, I should have -- I should have done that. If I had known, I would have done the right -- gone through the right steps. If I was given the right direction.

COMMISSIONER TURNBULL: Did you apply to the Department of Consumer Regulatory Affairs for --

MR. AGBRO: I had all different types of -- I had the different types of applications that I was dealing with at that time and unfortunately, I was going -- dealing with some health issues with my children during that time.

COMMISSIONER TURNBULL: Thanks.
I'm good.

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CHAIRPERSON JORDAN: Any other --
all right. Board, any other questions?

Does the Applicant have any
questions that they feel they really need to
ask Mr. Agbro? Do you have questions you
want to ask Mr. Agbro?

MS. BARNES: Well, I would like
to rebut however.

CHAIRPERSON JORDAN: No, we got
another rebutting section, but you have the
opportunity to ask any questions that you
want that's germane to this issue of your
deck. Anything that's going to support your
quest for permission to do your deck.

MS. BARNES: I have a question.
Who had the security camera that proved the
case and the break-in that you're talking
about?

CHAIRPERSON JORDAN: That's not
really relevant. The whole break-in -- I
mean to some extent, but, yes, I don't think
about the security camera is relevant.

MS. BARNES: Okay.

CHAIRPERSON JORDAN: Do you have
any other thing?

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MS. BARNES: Well, the thing is that he referred to the break-in and I was part of that break-in also and I was part of the resolution of that.

CHAIRPERSON JORDAN: You're part of the resolution of the break-in. Not part of the break-in.

MS. BARNES: No, that's exactly right.

CHAIRPERSON JORDAN: Okay.
Because you had a movie camera or something.

MS. BARNES: And I was -- and I was at home also.

CHAIRPERSON JORDAN: Okay.

MS. BARNES: Because I work out of my house --

CHAIRPERSON JORDAN: All right.

MS. BARNES: -- during that time.

CHAIRPERSON JORDAN: Any other questions you would like to ask Mr. Agbro?
Okay.

Then is there anyone else in the audience wishing to testify in opposition?
Anyone wishing to testify in opposition?

Then we will then turn back to

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the Barnes and get any rebuttal that you would like to make. You have a three-minute rebuttal if there is something you want to say.

MR. BARNES: Well, I think Mr. Agbro's statement is clear in that it doesn't really -- our deck does not impact the concerns for crime that he has. We have concerns for crime as well.

Our deck would not block the view of the alley. It would simply be a flat plane like -- as his deck is. We have ample, you know, lighting that we will be using.

I would note that Mr. Agbro did not bring any of his objections to the ANC which considered our application over the course of two meetings.

I would also note in connection with his deck that when I had inquired on three separate occasions of the office that issues building permits that they found no building permit issued for 1702 Kilborne at that time period when the deck was built. Building permits are public records. So,

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it's perfectly fitting to ask.

Now, Mr. Agbro in his safety concern most particularly raises the point that he was on his deck and was able to spot the burglar and call the police. Well, we're building a deck in part to use it not just to have it sitting there. So, we'll be out on the deck as well and we'll be -- have further eyes on the neighborhood given that, you know, he has that particular concern and we don't think the deck will provide hiding places.

CHAIRPERSON JORDAN: Okay. All right. Thank you. Then we'll close the record, but leave the record open only because I want -- we want to see the HPRB report and so, we'll close this hearing. Leave the record open regarding HPRB and schedule this for a decision date, Mr. Moy, and we certainly notify HPRB that we're waiting for something from them.

MR. MOY: Mr. Chairman, I'm not clear when this application would go before HPRB. Unless OP might know, but so, I'm kind of swimming here. So.

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CHAIRPERSON JORDAN: Let's put it -- let's set a date and if we don't have the report, then we will --

MR. MOY: Give it some time.

CHAIRPERSON JORDAN: Because we're not like trying to build a deck tomorrow anyway.

MS. BARNES: No, it's --

CHAIRPERSON JORDAN: Sixty days out.

MS. BARNES: Is it too late to submit some photographs?

CHAIRPERSON JORDAN: No, we don't need -- we're good.

MS. BARNES: Okay. Right.

CHAIRPERSON JORDAN: We're only keeping the record open for HPRB.

MR. AGBRO: Mr. Chairman.

CHAIRPERSON JORDAN: Yes.

MR. AGBRO: I just want to add that --

CHAIRPERSON JORDAN: No, it's nothing about -- no testimony. No discussion about evidence. You can ask procedural matters --

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MR. AGBRO: Evidence --

CHAIRPERSON JORDAN: -- or questions. I'll allow that, but nothing about the pros or cons of this.

MR. AGBRO: Not about -- I just want to say that I do not -- okay. Well, I think we have no objections to them having a deck like ours. I just want to say that for the record. It's just the fact that all these things happened. We just wanted the Board to know. That's why I'm here.

CHAIRPERSON JORDAN: All right. Thank you.

MR. MOY: Mr. Chairman, just on the schedule, Mr. Turnbull is sitting with the Board on February the 11th. I think that would be a good date.

CHAIRPERSON JORDAN: Okay. We can see. This gets in front of -- I would follow up with HPRB making sure that they have this and they're processing it, your application, your desires so they can try to get them to make -- weigh in on this. Okay.

MS. BARNES: Thank you very much.

CHAIRPERSON JORDAN: Well, good.

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Thank you, all. Thank you for coming.

MR. AGBRO: Thank you very much.
Appreciate it.

CHAIRPERSON JORDAN: All right.
We need to continue. This is our last case
for the day. Right?

MR. MOY: Yes, sir, absolutely.

CHAIRPERSON JORDAN: One that we
kind of held up so that somebody else could
join us, but we're glad she did. For the
record, S. Kathryn Allen, Vice Chair of the
Board, joined us just prior to testimony
being taken -- took place in 18679.

MR. MOY: Yes, so, anyway, so the
next case for the day is Application 18640.
This is the Application of Barry Jackson.

CHAIRPERSON JORDAN: Okay. Six
forty. Right? Oh, yes.

MR. MOY: That's right 640.

CHAIRPERSON JORDAN: But, you
don't have to run off unless you want to.
We like you staying. No, because
Commissioner Cohen is -- has submitted.

This is a matter which we --
well, identify yourselves please.

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MS. FOWLER: Good morning.
Jennifer Fowler, the architect.

CHAIRPERSON JORDAN: Okay. And
we've already taken testimony in this matter
and the record was left open for certain
things to be submitted. One was the -- a
new shadow study that also included the full
property top and bottom so we could see.

What else did we leave the record
open for? One second. Where's my notes?
18640.

We also left it open to clarify
any ANC status of report -- status of
support. I don't think we -- did we get
anything from the ANC on this one? Is that
some of the things we got this morning.
Yes, we got something this morning and the
ANC has removed any conditions that they
have I believe for support. So, they do
stand in support of the application.

And we were suppose to receive --
we received shadow studies both from -- we
were suppose to receive shadow studies from
the Applicant and if the opposition was to
submit one, I don't have it in the file.

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Did I see someone in the back?
Are you trying to submit something?

MS. KRONSTADT: These plans have
changed a few times.

CHAIRPERSON JORDAN: Come forward
and please identify yourself. Yes. Sit
down first because I don't know if we're
accepting anything from anybody because it's
beyond the date and time we're suppose to
receive something.

So, take a seat and identify
yourself please. Okay. Identify yourself
please.

MS. KRONSTADT: My name is Nancy
Kronstadt. I am the owner of 755 10th
Street, S.E. Which is one of the two condo
-- condos.

CHAIRPERSON JORDAN: Right. And
you testified earlier during the hearing.
Yes, and there were documents that were
suppose to be submitted prior to today.

MS. KRONSTADT: Not -- I did not
know there was a deadline.

CHAIRPERSON JORDAN: Yes, you
were in that hearing when the deadline was

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set for the submission of the shadow studies from both parties, from the party and any opposition thereof.

Those things were suppose to be in I believe it was -- was it the 10th?

MS. FOWLER: It was the 10th. Correct.

CHAIRPERSON JORDAN: And as well as the ANC submitting their letter. So, at this point, we're not going to accept anything additional into the record. That's all we left the record open for was for these particular things.

So, we now have all that we have and we could move this to -- any aspect of deliberation if that's all right with the Board. Yes.

Because we review these things prior to today and prior to -- that's why we had deadlines and dates to submit documents and we did already take the testimony. We've looked at all these things. So, then we made sure that the record is now completely closed.

All right. So, then let's close

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the record and are we ready to deliberate in this matter?

I think, Ms. Allen -- do we have an absentee for Ms. Cohen?

MR. MOY: Yes, we do, sir.

CHAIRPERSON JORDAN: Then we can proceed and we do have -- still have a quorum of the Board. So, we can move this along.

Based upon the change as submitted in regards to this application, I believe this is one which I can support clearly for allowing the relief requested by the Applicant. The plans actually have been revised. I don't find that there's undue impact or substantial impact by the changes -- by the Applicant's plans in regards to this property.

I think the shadow study shows minimum to little impact and at best, there may be some aspect of additional shading which will come about in -- let's see what period of time this is. There is some additional between March and September 21st for 5:00 p.m. and December 21st in the

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afternoon -- late afternoon.

And so with that, I would move that we grant the request of the Applicant based upon the amended plans.

VICE CHAIR ALLEN: Second.

CHAIRPERSON JORDAN: Motion made and second. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON JORDAN: Those opposed nay. Mr. Moy, we have an absentee.

MR. MOY: Yes, sir, we have an absentee ballot from participating member Ms. Cohen. Her absentee ballot vote is to approve the applications with any conditions that might be imposed by the Board.

CHAIRPERSON JORDAN: Okay. All right. So, you want to poll the Board? Because you got to poll us --

MR. MOY: No, I'm just saying what was on her absentee.

CHAIRPERSON JORDAN: I know. So, you just want to poll the two of us so we can -- all right. So, is that it? The motion's -- to poll the Board of --

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MR. MOY: Oh. I'm sorry. I'm sorry. There was a motion and there a second.

CHAIRPERSON JORDAN: Right. Right.

MR. MOY: I apologize. Okay. Chairman Jordan made a motion to approve the application. Second the motion Vice Chairperson Allen and with the absentee vote from Ms. Cohen to support the Chairman's motion. The vote carries on a vote of 3 to 0.

CHAIRPERSON JORDAN: Right. All right. Thank you. Okay. And this concludes our matter. Thank you.

MS. FOWLER: Thank you.

CHAIRPERSON JORDAN: We actually could do a summary order, but let's not do one. We could do a summary, but let's not.

MR. MOY: Okay. Understood.

CHAIRPERSON JORDAN: We didn't have any party in opposition.

MR. MOY: That's correct, sir.

MS. FOWLER: Are we going to have a full order on that or a summary?

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CHAIRPERSON JORDAN: Well --

MS. FOWLER: So --

CHAIRPERSON JORDAN: -- that's why I was just -- you know, we -- that's why I was just trying to work through it. We could do it either way.

MR. MOY: Or we could do a hybrid. Well, I hate to use that word, but summary order that's more substantive. But, not quite a full order.

CHAIRPERSON JORDAN: Let's do a full order.

MR. MOY: Full order. Okay.

CHAIRPERSON JORDAN: I'm just asking to do a full.

MR. MOY: I'm good with that.

MS. FOWLER: Thank you. I appreciate that.

CHAIRPERSON JORDAN: All right. Is there any other business other than -- there is one other item of business.

As Chairperson of the Board of Zoning Adjustment in accordance with Section 405(b)(4) and 405(b)(13) of the District of Columbia Administrative Procedural Act, I

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move that the Board hold closed meetings on -- what was the dates, Mr. Moy? Mr. Moy, what are the dates -- potential dates? Okay.

Well, it would be every Monday preceding the docket. So, it would be January 6th, January 13th, January 27th and that the meeting will begin at 4:00 p.m. for the purpose of obtaining legal advice from our counsel and to deliberate upon, but not voting on cases scheduled to be publicly heard or decided by the Board on the day after each such meeting. These cases are identified on the Board's public agenda for January 7th, 14th, Wednesday the 29th.

I got to take a breath.

Is there a second?

VICE CHAIR ALLEN: Second.

CHAIRPERSON JORDAN: Motion made and second. Will the secretary please take a roll call vote?

MR. MOY: Yes, when I call a member's name, if the member can respond with either a yes or a no, yea or nay. Like that.

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Mr. Turnbull?

COMMISSIONER TURNBULL: Yes.

MR. MOY: Chairman Jordan?

CHAIRPERSON JORDAN: Yes.

MR. MOY: Vice Chairperson Allen?

VICE CHAIR ALLEN: Yes.

MR. MOY: Mr. Hinkle?

MEMBER HINKLE: Yea.

MR. MOY: And we have a Board

Member -- well, a Board seat vacant.

Motion carries, Mr. Chairman.

CHAIRPERSON JORDAN: Thank you.

Then we're adjourned until tomorrow. That's right.

MR. MOY: For the record.

CHAIRPERSON JORDAN: Because there's a snow day, so, the Board is meeting December 18th at 1:00 p.m.

MR. MOY: At 1:00 p.m., sir.

CHAIRPERSON JORDAN: Yes.

MR. MOY: Tomorrow.

CHAIRPERSON JORDAN: Yes, so, see you tomorrow. Same time. Same place. See you.

So, we're adjourned until

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tomorrow. Thank you.

(Whereupon, at 11:34 a.m., the
hearing was adjourned.)

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